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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) SCS-124-1166	
Application Number 10/589,075		Filed August 11, 2006	
First Named Inventor SCOTT			
Art Unit 4158		Examiner M. LaPage	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

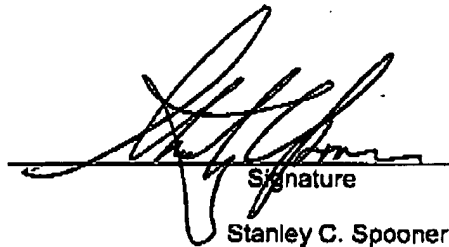
Note: No more than five (5) pages may be provided.

I am the

- ☐ Applicant/Inventor
- ☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

- ☒ Attorney or agent of record 27,393
(Reg. No.)

- ☐ Attorney or agent acting under 37CFR 1.34.
Registration number if acting under 37 C.F.R. § 1.34 _____


Signature
Stanley C. Spooner

Typed or printed name

703-816-4028

Requester's telephone number

March 13, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

- ☒ *Total of 1 form/s are submitted.

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**STATEMENT OF ARGUMENTS IN SUPPORT OF
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

The following listing of clear errors in the Examiner's rejection and his failure to identify essential elements necessary for a *prima facie* basis of rejection is responsive to the Final Official Action mailed November 13, 2008 (Paper No. 20081105).

Error #1. The Examiner fails to properly construe the claim terms "radiation means," "inspecting means" and "wavefront shaping means"

Nowhere in the present Official Action does the Examiner properly construe the "radiation means," "inspecting means" (including the claimed "detector means") and "wavefront shaping means" as set out in Applicants' independent claim 1. The Examiner will note that each of these clauses in Applicants' claim 1 utilizes the term "means" which establishes a legal presumption that means-plus-function language is specified. Furthermore, there is no disclosure of any structure for accomplishing the specified function, thereby confirming that the "means" clauses in independent claim 1 must be construed in accordance with the 6th paragraph of 35 USC §112. The Examiner's failure to properly construe claim 1 is reversible error.

If the Examiner had properly construed claim 1, the Examiner would first look to the structure in the specification which corresponds to the claimed "radiation means." Applicants' specification, in each of the disclosed embodiments, discloses a single "light source 1" which comprises the "radiation means for directing an incident beam of radiation onto the object." Accordingly, the Examiner must construe "radiation means" as requiring a single source of incident beam radiation and equivalents thereof.

Applicants' "inspecting means" includes the "detector means" which is the structure in the Applicants' specification which is for "detecting radiation intensity of said two or more beams on

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the detector means." The corresponding structure in the present specification is the CCD camera 8 and equivalents thereof.

Applicants' claim also includes "at least one wavefront shaping means" which is disclosed as

Additionally, the wavefront shaping means is interrelated with the "radiation means" and "inspecting means" so that "the final beam will have a substantially planar wavefront when said object has said specified shape." This interrelationship must also be included as a portion of this claim.

The Examiner will appreciate that the collimating lens 2 is required in all of the embodiments and additional structures such as the lens 11 (in Fig. 2), holograms or diffraction gratings (if necessary), etc. depending upon the complex nature of the surface or material being profiled.

All of the structures which are recited in claim 1 and properly construed must be present in any anticipating prior art.

Error #2. The Examiner's rejection under 35 USC §112 is defective in that the Examiner does not believe the difference between the inspecting means and detector means is clear

Applicants' claim specifies "wherein said inspecting means comprises: . . . detector means for detecting radiation intensity" Thus, the "detector means" is one component which makes up the combination of elements making up the "inspecting means." The other component making up the "inspecting means" is the "beamsplitting means." Thus, the Examiner errs in reading independent claim 1 and failing to appreciate that the "inspecting means" includes a "beamsplitting means" and a "detector means."

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When properly construed, the current language of claim 1 meets all requirements of 35 USC §112 and any further objection or rejection thereunder is respectfully traversed.

Error #3. The Kuchel reference does not disclose all claimed structures and all claimed interrelationships between structures

The Kuchel reference fails to disclose Applicants' claimed "radiation means", the "inspecting means" or the "wavefront shaping means" as limited by the "means" elements in claim 1.

As noted above, Kuchel does not anticipate Applicant's claimed "radiation means" (disclosed in the specification as "light source 1"). Instead, Kuchel teaches two separate wavelength lasers (1 and 2) for transmitting coincidentally two different beams of light having different wavelengths. Therefore, Kuchel fails to teach the claimed and construed "radiation means" which is a single light source.

The structure of Kuchel does not anticipate Applicants' claimed "inspecting means" which includes the claimed "detector means" (disclosed in the specification as CCD Camera 8). Kuchel teaches that two different detectors (21 and 24) are needed to supply outputs to the computer 22.

Additionally, there is no disclosure that Kuchel teaches Applicants' claimed "at least one wavefront shaping means" disposed between the radiation means and the inspecting means wherein the structures are arranged such that "the final beam will have a substantially planar wavefront when said object has said specified shape." Furthermore, the wavefront shaping means, as disclosed in Applicants' specification, is arranged "to compensate for non-planarity introduced by said object having said specified shape." All of these are features positively

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recited in Applicants' independent claims 1 and 19 and are believed missing from the Kuchel reference, thereby obviating any further anticipation rejection.

Moreover, the Examiner admits on page 7, last two lines, that "Kuchel does not explicitly disclose directing said two or more beams to laterally displaced locations on a detector." While this is recited in Applicants' "beamsplitting means" language, the Examiner's admission clearly confirms that Kuchel cannot possibly anticipate claims 1 or 19.

Error #4. Because Kuchel does not disclose the subject matter of independent claims 1 and 19, it cannot by itself render obvious the subject matter of claims 8, 10, 12, 13 and 19-21

As noted above, Kuchel clearly fails to disclose at least three structures and one structural interrelationship feature of Applicants' independent claims 1 and 19. If these features are not disclosed somewhere in the single reference, they certainly cannot be obvious in view of the reference. Accordingly, there can be no *prima facie* case of obviousness.

The Examiner attempts to overcome this major defect by suggesting that he takes "Official Notice" of the equivalents of lenses and diffraction gratings. This contention is respectfully traversed and, pursuant to MPEP Section 2144.03(c), Applicants challenge the factual assertion.

Accordingly, there is simply no support for the Examiner's factual assertions with respect to the features of claims 8, 10, 12, 13 and 19-21 being disclosed or obvious in view of the Kuchel reference and any further rejection thereunder is respectfully traversed.

SUMMARY

Regarding the Examiner's §112 rejection of claim 1, the claim clearly identifies that the "detector means" is at least one part of a combination of elements designated the "inspecting means" and the Examiner apparently just misread the claim. The Examiner fails to properly

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construe the independent claim 1 which is in statutory form of a "means-plus-function" claim under 35 USC §112(6th)). Additionally, the Examiner fails to indicate where he believes that Kuchel teaches the claimed "single light source", the "CCD camera 8" and the gratings, lenses, mirrors, etc. making up the "wavefront shaping means" in the various embodiments. Moreover, the Examiner fails to demonstrate that these claimed elements are "arranged" so that "the final beam will have a substantially planar wavefront when said object has said specified shape." Further, the Examiner actually admits that Kuchel does not disclose the claimed directing of "two or more beams to laterally displaced locations on a detector." As a result of any of the missing structures or structural interrelationships, Kuchel can't anticipate claims 1 or 19 or claims dependent thereon. The Examiner has not supported his "Official Notice" and this has been traversed. Therefore, there is no evidence support a *prima facie* case of obviousness.

As a result of the above, there is simply no support for the rejection of Applicants' independent claims 1 or 19 or claims dependent thereon under 35 USC §112, §102 and/or §103. Applicants respectfully request that the Pre-Appeal Panel find that the application is allowed on the existing claims and prosecution on the merits should be closed.